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18  
19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN JOSE DIVISION  
22

23 Alta Devices, Inc.,  
24 Plaintiff,  
25 v.  
26 LG Electronics, Inc.,  
27 Defendant.  
28

Case No. 5:18-cv-00404-LHK-VKD

~~PROPOSED~~ **STIPULATED  
PROTECTIVE ORDER FOR LITIGATION  
INVOLVING HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS**

Re: Dkt. 39

**MODIFIED BY THE COURT**

1       **1.     PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
7 protections on all disclosures or responses to discovery and that the protection it affords from  
8 public disclosure and use extends only to the limited information or items that are entitled to  
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as  
10 set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file  
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
12 followed and the standards that will be applied when a party seeks permission from the court to  
13 file material under seal.

14       **2.     DEFINITIONS**

15           2.1     Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

17           2.2     “CONFIDENTIAL” Information or Items: information (regardless of how it is  
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
19 of Civil Procedure 26(c).

20           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
21 well as their support staff).

22           2.4     Designated House Counsel: House Counsel who seek access to “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24           2.5     Designating Party: a Party or Non-Party that designates information or items that  
25 it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
27 SOURCE CODE”.  
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1           2.6    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other  
3 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
4 or responses to discovery in this matter.

5           2.7    Expert: a person with specialized knowledge or experience in a matter pertinent  
6 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
7 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
9 or of a Party's competitor.

10          2.8    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
13 less restrictive means.

14          2.9    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
15 extremely sensitive "Confidential Information or Items" representing computer code and  
16 associated comments and revision histories, formulas, engineering specifications, or schematics  
17 that define or otherwise describe in detail the algorithms or structure of software or hardware  
18 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
19 serious harm that could not be avoided by less restrictive means.

20          2.10   House Counsel: attorneys who are employees of a party to this action. House  
21 Counsel does not include Outside Counsel of Record or any other outside counsel.

22          2.11   Non-Party: any natural person, partnership, corporation, association, or other  
23 legal entity not named as a Party to this action.

24          2.12   Outside Counsel of Record: attorneys who are not employees of a party to this  
25 action but are retained to represent or advise a party to this action and have appeared in this  
26 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
27 that party.  
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1           2.13    Party: any party to this action, including all of its officers, directors, employees,  
2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3           2.14    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
4 Material in this action.

5           2.15    Professional Vendors: persons or entities that provide litigation support services  
6 (e.g., photocopying, videotaping, translating or interpreting, preparing exhibits or  
7 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their  
8 employees and subcontractors.

9           2.16    Protected Material: any Disclosure or Discovery Material that is designated as  
10 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as  
11 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

12          2.17    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
13 Producing Party.

14    **3.     SCOPE**

15           The protections conferred by this Stipulation and Order cover not only Protected Material  
16 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
17 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
19 However, the protections conferred by this Stipulation and Order do not cover the following  
20 information: (a) any information that is in the public domain at the time of disclosure to a  
21 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
22 a result of publication not involving a violation of this Order, including becoming part of the  
23 public record through trial or otherwise; and (b) any information known to the Receiving Party  
24 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
25 obtained the information lawfully and under no obligation of confidentiality to the Designating  
26 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.  
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1       **4. DURATION**

2           Even after final disposition of this litigation, the confidentiality obligations imposed by  
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
7 action, including the time limits for filing any motions or applications for extension of time  
8 pursuant to applicable law.

9       **5. DESIGNATING PROTECTED MATERIAL**

10           5.1     Exercise of Restraint and Care in Designating Material for Protection. Each Party  
11 or Non-Party that designates information or items for protection under this Order must take care  
12 to limit any such designation to specific material that qualifies under the appropriate standards.  
13 To the extent it is practical to do so, the Designating Party must designate for protection only  
14 those parts of material, documents, items, or oral or written communications that qualify – so  
15 that other portions of the material, documents, items, or communications for which protection is  
16 not warranted are not swept unjustifiably within the ambit of this Order.

17           Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
19 unnecessarily encumber or retard the case development process or to impose unnecessary  
20 expenses and burdens on other parties) expose the Designating Party to sanctions.

21           If it comes to a Designating Party's attention that information or items that it designated  
22 for protection do not qualify for protection at all or do not qualify for the level of protection  
23 initially asserted, that Designating Party must promptly notify all other parties that it is  
24 withdrawing the mistaken designation.

25           5.2     Manner and Timing of Designations. Except as otherwise provided in this Order  
26 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
27 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
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1 designated before the material is disclosed or produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,  
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
5 Party affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’  
6 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
7 protected material. If only a portion or portions of the material on a page qualifies for protection,  
8 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
9 appropriate markings in the margins) and must specify, for each portion, the level of protection  
10 being asserted.

11 A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which  
13 material it would like copied and produced. During the inspection and before the designation, all  
14 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
20 SOURCE CODE) to each page that contains Protected Material. If only a portion or portions of  
21 the material on a page qualifies for protection, the Producing Party also must clearly identify the  
22 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
23 each portion, the level of protection being asserted.

24 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
25 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
26 other proceeding, all protected testimony and specify the level of protection being asserted.  
27 When it is impractical to identify separately each portion of testimony that is entitled to  
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1 protection and it appears that substantial portions of the testimony may qualify for protection, the  
2 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
3 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
4 which protection is sought and to specify the level of protection being asserted. Only those  
5 portions of the testimony that are appropriately designated for protection within the 21 days shall  
6 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating  
7 Party may specify, at the deposition or up to 21 days afterwards if that period is properly  
8 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 Parties shall give the other parties notice if they reasonably expect a deposition, hearing  
11 or other proceeding to include Protected Material so that the other parties can ensure that only  
12 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
13 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
14 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 Transcripts containing Protected Material shall have an obvious legend on the title page  
17 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
18 pages (including line numbers as appropriate) that have been designated as Protected Material  
19 and the level of protection being asserted by the Designating Party. The Designating Party shall  
20 inform the court reporter of these requirements. Any transcript that is prepared before the  
21 expiration of a 21-day period for designation shall be treated during that period as if it had been  
22 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
23 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
24 actually designated.

25 (c) For information produced in some form other than documentary and for  
26 any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
27 the container or containers in which the information or item is stored the legend  
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1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” “HIGHLY  
2 CONFIDENTIAL – SOURCE CODE”. If only a portion or portions of the information or item  
3 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
4 portion(s) and specify the level of protection being asserted.

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
6 designate qualified information or items does not, standing alone, waive the Designating Party’s  
7 right to secure protection under this Order for such material. Upon timely correction of a  
8 designation, the Receiving Party must make reasonable efforts to assure that the material is  
9 treated in accordance with the provisions of this Order.

## 10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
12 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
18 process by providing written notice of each designation it is challenging and describing the basis  
19 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
20 notice must recite that the challenge to confidentiality is being made in accordance with this  
21 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
22 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
23 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
24 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
25 designation was not proper and must give the Designating Party an opportunity to review the  
26 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
27 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
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stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court ~~intervention, the Designating Party shall file and serve a motion to retain confidentiality under Standing Order for Civil Cases (and in compliance with Civ. L.R. 79-5, if applicable).~~ they shall comply with the discovery dispute procedure outlined in Judge DeMarchi's Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may ~~file a motion challenging~~ seek relief with respect to a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. ~~Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has~~ In any discovery letter brief filed pursuant to this provision, the parties shall attest that they have complied with the meet and confer requirements imposed by the preceding paragraph. ~~and the Standing Order for Civil Cases.~~

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to ~~file a motion to retain confidentiality~~ seek court intervention as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for

1 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
2 disclosed only to the categories of persons and under the conditions described in this Order.  
3 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
4 section 15 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a location and  
6 in a secure manner that ensures that access is limited to the persons authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
8 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
9 disclose any information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
11 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
12 information for this litigation, provided that, for each law firm, a manager or supervisor has  
13 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A  
14 on behalf of the law firm;

15 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
16 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
19 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
20 Agreement to Be Bound” (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants (including mock  
23 jurors for any mock trial), and Professional Vendors to whom disclosure is reasonably necessary  
24 for this litigation, provided that, for each of said vendors or other entities, a manager or  
25 supervisor has signed the “Acknowledgment and Agreement to Be Bound” that is attached  
26 hereto as Exhibit A on behalf of the same;

27 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
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1 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
2 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
3 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
4 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
5 under this Stipulated Protective Order; and

6 (g) the author or recipient of a document containing the information or a custodian or  
7 other person who otherwise possessed or knew the information.

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise  
10 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
11 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
12 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
14 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
15 information for this litigation, provided that, for each law firm, a manager or supervisor has  
16 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A  
17 on behalf of the law firm;

18 (b) Designated House Counsel of the Receiving Party (1) who has no  
19 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for  
20 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
21 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1) below have been  
22 followed; provided however that Designated House Counsel may not have access to HIGHLY  
23 CONFIDENTIAL – SOURCE CODE.

24 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably  
25 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
26 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2) below  
27 have been followed;

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants

3 (including mock jurors for any mock trial), and Professional Vendors to whom disclosure is

4 reasonably necessary for this litigation, provided that, for each of said vendors or other entities, a

5 manager or supervisor has signed the “Acknowledgment and Agreement to Be Bound” that is

6 attached hereto as Exhibit A on behalf of the same; and

7 (f) the author or recipient of a document containing the information or a

8 custodian or other person who otherwise possessed or knew the information.

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY

10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –

11 SOURCE CODE” Information or Items to Designated House Counsel or Experts.

12 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating

13 Party, a Receiving Party that seeks to disclose to Designated House Counsel any information or

14 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

15 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)

16 sets forth the full name of the Designated House Counsel and the city and state of his or her

17 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable

18 future primary job duties and responsibilities in sufficient detail to determine if said Designated

19 House Counsel is involved, or may become involved, in any competitive decision-making.

20 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the

21 Designating Party, a Receiving Party that seeks to disclose to an Expert (as defined in this Order)

22 any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’

23 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph

24 7.3(c) first must make a written request to the Designating Party that (1) sets forth the full name

25 of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the

26 Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each

27 person or entity from whom the Expert has received compensation or funding for work in his or

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1 her areas of expertise or to whom the expert has provided professional services, including in  
2 connection with a litigation, at any time during the preceding five years, and (5) identifies (by  
3 name and number of the case, filing date, and location of court) any litigation in connection with  
4 which the Expert has offered expert testimony, including through a declaration, report, or  
5 testimony at a deposition or trial, during the preceding five years. If the Expert believes any of  
6 the information referenced in clause (4) immediately above is subject to a confidentiality  
7 obligation to a third party, then it shall be so stated in the written request. In addition, the Expert  
8 shall provide to the Receiving Party's Outside Counsel of Record whatever information the  
9 Expert believes can be disclosed without violating any such confidentiality obligation, and the  
10 Receiving Party's Outside Counsel of Record seeking to disclose to the Expert shall meet and  
11 confer with the Designating Party's Outside Counsel of Record regarding any such third party  
12 confidentiality obligation.

13 (b) A Party that makes a request and provides the information specified in the  
14 preceding respective paragraphs may disclose the subject Protected Material to the identified  
15 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party  
16 receives a written objection from the Designating Party. Any such objection must set forth in  
17 detail the grounds on which it is based.

18 (c) A Party that receives a timely written objection must meet and confer with  
19 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
20 agreement within seven days of the written objection. If no agreement is reached, ~~the Party~~ **the parties shall**  
21 ~~comply with the discovery dispute procedure outlined in Judge DeMarchi's Standing Order for~~  
22 ~~seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as~~  
23 ~~Civil Cases, and with Civil Local Rule 79-5 if applicable,~~  
24 ~~provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)~~  
25 ~~Any discovery letter brief~~  
26 seeking permission from the court to do so. ~~Any such motion~~ must describe the circumstances  
27 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel  
28 or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,  
and suggest any additional means that could be used to reduce that risk. In addition, any such  
~~discovery letter brief shall describe~~  
~~motion must be accompanied by a competent declaration describing~~ the parties' efforts to

1 resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
2 discussions) and ~~setting~~<sup>set</sup> forth the reasons advanced by the Designating Party for its refusal to  
3 approve the disclosure.

4 In any such proceeding, the Party opposing disclosure to Designated House Counsel or  
5 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
6 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
7 Material to its Designated House Counsel or Expert.

## 8 **8. PROSECUTION BAR**

9 Absent written consent from the Producing Party, any individual who receives access to  
10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL  
11 – SOURCE CODE" information shall not be involved in the prosecution of patents or patent  
12 applications relating to the manufacture of gallium arsenide thin-film solar cells before any  
13 foreign or domestic agency, including the United States Patent and Trademark Office ("the  
14 Patent Office").

15 For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,  
16 amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid  
17 any doubt, "prosecution" as used in this paragraph does not include representing a party  
18 challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue  
19 protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin  
20 when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY  
21 CONFIDENTIAL – SOURCE CODE" information is first received by the affected individual  
22 and shall end two (2) years after final termination of this action.

## 23 **9. SOURCE CODE**

24 (a) To the extent production of source code becomes necessary in this case, a  
25 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
26 if it comprises or includes confidential, proprietary or trade secret source code.

27 (b) Protected Material designated as "HIGHLY CONFIDENTIAL –  
28

1 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY  
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information including the Prosecution Bar  
3 set forth in Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in  
5 Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

6 (c) Any source code produced in discovery shall be made available for  
7 inspection, in a format allowing it to be reasonably reviewed and searched under conditions  
8 satisfactory to the Producing Party that assure the continued confidentiality of the source code,  
9 during normal business hours or at other mutually agreeable times, at an office of the Producing  
10 Party’s counsel or another mutually agreed upon location. The source code may, at the  
11 Producing Party’s discretion, be made available for inspection on a secured computer in a  
12 secured room without Internet access or network access to other computers, and the Receiving  
13 Party shall not copy, remove, or otherwise transfer any portion of such source code onto any  
14 recordable media or recordable device. The Producing Party may visually monitor the activities  
15 of the Receiving Party’s representatives during any source code review, but only to ensure that  
16 there is no unauthorized recording, copying, or transmission of the source code. The Producing  
17 Party may require the Receiving Party to keep a paper log indicating the names of any  
18 individuals inspecting source code (other than during deposition) and the dates and times of  
19 inspection, and the names of any individuals to whom paper copies of portions of source code  
20 are provided.

21 (d) The Receiving Party may request paper copies of limited portions of  
22 source code that are reasonably necessary for the preparation of court filings, pleadings, expert  
23 reports, or other papers, or for deposition or trial, but shall not request paper copies for the  
24 purposes of reviewing the source code other than electronically as set forth in paragraph (c) in  
25 the first instance. The Producing Party shall provide all such source code in paper form including  
26 bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing  
27 Party may challenge the amount of source code requested in hard copy form pursuant to the  
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1 dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing  
2 Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes  
3 of dispute resolution.

4 (e) The Receiving Party shall maintain a record of any individual who has  
5 inspected any portion of the source code in electronic or paper form. The Receiving Party shall  
6 maintain all paper copies of any printed portions of the source code in a secured, locked area.  
7 The Receiving Party shall not create any electronic or other images of the paper copies and shall  
8 not convert any of the information contained in the paper copies into any electronic format. The  
9 Receiving Party shall only make additional paper copies if such additional copies are (1)  
10 necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s  
11 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its  
12 case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the  
13 end of each day and must not be given to or left with a court reporter or any other unauthorized  
14 individual.

15 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
16 **OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation that  
18 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL  
20 – SOURCE CODE” that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall  
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to  
24 issue in the other litigation that some or all of the material covered by the subpoena or order is  
25 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
26 Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued  
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1 by the Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served with the  
3 subpoena or court order shall not produce any information designated in this action as  
4 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
5 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from  
6 which the subpoena or order issued, unless the Party has obtained the Designating Party’s  
7 permission. The Designating Party shall bear the burden and expense of seeking protection in  
8 that court of its confidential material – and nothing in these provisions should be construed as  
9 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
10 another court.

11 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
12 **THIS LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-  
14 Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
16 information produced by Non-Parties in connection with this litigation is protected by the  
17 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
18 prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to  
20 produce a Non-Party’s confidential information in its possession, and the Party is subject to an  
21 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the  
22 Party shall:

- 23 1. promptly notify in writing the Requesting Party and the Non-Party  
24 that some or all of the information requested is subject to a confidentiality agreement with a  
25 Non-Party;
- 26 2. promptly provide the Non-Party with a copy of the Stipulated  
27 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
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1 description of the information requested; and

2 3. make the information requested available for inspection by the  
3 Non-Party.

4 (c) If the Non-Party fails to object or seek a protective order from this court  
5 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
6 produce the Non-Party's confidential information responsive to the discovery request. If the  
7 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
8 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
9 before a determination by the court. Absent a court order to the contrary, the Non-Party shall  
10 bear the burden and expense of seeking protection in this court of its Protected Material.

11 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
13 Material to any person or in any circumstance not authorized under this Stipulated Protective  
14 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
15 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
16 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
17 made of all the terms of this Order, and (d) request such person or persons to execute the  
18 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

19 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
20 **PROTECTED MATERIAL**

21 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
22 produced material is subject to a claim of privilege or other protection, the obligations of the  
23 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
24 provision is not intended to modify whatever procedure may be established in an e-discovery  
25 order that provides for production without prior privilege review. This Stipulated Protective  
26 Order constitutes the Parties' agreement on the effect of disclosure of a communication or  
27 information covered by the attorney-client privilege or work product protection, and, when  
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1 adopted by the Court, constitutes an Order pursuant to Federal Rules of Evidence 502(d) and (e).  
2 Inadvertent production of material subject to a claim of privilege or other protection will not  
3 constitute waiver absent a court determination that waiver of such privilege or other protection  
4 occurred.

5 **14. MISCELLANEOUS**

6 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
7 seek its modification by the court in the future.

8 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
11 no Party waives any right to object on any ground to use in evidence of any of the material  
12 covered by this Protective Order.

13 14.4 Filing Protected Material. Without written permission from the Designating Party  
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
15 the public record in this action any Protected Material. A Party that seeks to file under seal any  
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
17 filed under seal pursuant to a court order authorizing the sealing of the specific Protected  
18 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a  
19 request establishing that the Protected Material at issue is privileged, protectable as a trade  
20 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file  
21 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then  
22 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local  
23 Rule 79-5(e)(2) unless otherwise instructed by the court.

24 **15. FINAL DISPOSITION**

25 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
26 Receiving Party must return all Protected Material to the Producing Party or destroy such  
27 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
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1 compilations, summaries, and any other format reproducing or capturing any of the Protected  
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
3 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
4 Designating Party) by the 60-day deadline that affirms that the Receiving Party has not retained  
5 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any  
6 of the Protected Material. Notwithstanding this provision, Outside Counsel of Record are  
7 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
8 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
9 attorney work product, and consultant and expert work product, even if such materials contain  
10 Protected Material. Any such archival copies that contain or constitute Protected Material remain  
11 subject to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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4 DATED: 8/3/2018

/s/ John D. O'Connor

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15 DATED: 8/3/2018

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Attorneys for Defendant

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ATTESTATION OF CONCURRENCE

Pursuant to Local Rule 5-1(i), I hereby attest that the other signatory or signatories to this document concurred in this filing.

DATED: 8/3/2018

/s/ John D. O'Connor  
John D. O'Connor  
O'CONNOR AND ASSOCIATES  
Attorneys for Plaintiff  
ALTA DEVICES, INC.

AS MODIFIED BY THE COURT,  
PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 6, 2018

  
Hon. Virginia K. DeMarchi  
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of

\_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and

understand the Stipulated Protective Order that was issued by the United States District Court for  
the Northern District of California on \_\_\_\_\_[date] in the case of *Alta Devices, Inc.*  
*v. LG Electronics, Inc.*, Case No. \_5:18-cv-00404-LHK-VKD. I agree to comply with and to be  
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is subject to  
this Stipulated Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone  
number] as my California agent for service of process in connection with this action or any  
proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]